



STATE OF WASHINGTON

## DEPARTMENT OF ECOLOGY

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Dear Interested Persons:

Over the last several years the Department of Ecology (Ecology) has pursued a multi-track strategy for meeting the technical, institutional and policy challenges associated with preventing and cleanup up contaminated sediments. This includes implementation of sediment cleanup and source control projects, strengthening institutional relationships and revising the scope of the Sediment Management Standards (SMS) rule. During the last several months, Ecology has re-assessed the overall environmental effectiveness of this strategy. Based on that review, we have decided to take a different tact to meeting these challenges. Specifically, we are halting the SMS rule amendment process to focus our resources in areas that will allow us to (1) make greater progress on project implementation, (2) strengthen working relationships with other agencies, and (3) measure the environmental results of our actions.

### The SMS Rule Amendment Process

Ecology began the process to amend the SMS rule in 1997. During the last year, Ecology distributed draft rule revisions for advisory committee review. Reviewers identified numerous issues and concerns associated with the revisions. After reviewing comments, Ecology decided to halt rulemaking and refocus resources on implementing the current SMS rule (see below). The principal reasons for the decision include:

- Ecology does not currently have the necessary capacity to effectively move forward on the SMS rule at the same time we are pursuing other agency priorities and environmental initiatives;
- There are many unresolved issues involving the linkages between the SMS rule, Clean Water Act and Endangered Species Act;
- Aligning the SMS rule and the Model Toxics Control Act (MTCA) rule will be easier once the MTCA process is completed; and
- Additional technical work is needed to support SMS rule revisions.

### Implementing the Current SMS Rule

The Toxics Cleanup Program intends to use the technical work and staff expertise developed during the rulemaking process to improve implementation of the current SMS rule, strengthen relationships and improve our ability to measure environmental progress. Specifically, we will emphasize the following activities (See Attachment A for details):

- Provide increased technical and management resources for sediment cleanup projects and source control actions;
- Resolve regulatory process uncertainties that are slowing down sediment cleanup projects;
- Work with other sediment management agencies to reinvigorate interagency coordination and decision-making processes;
- Work with other agencies and Ecology programs to better align cleanup monitoring efforts with other monitoring programs; and
- Improve sediment cleanup site and source control tracking and performance accountability.

### Evaluating the Need for Future Rule Amendments

Ecology does not have specific plans to re-engage the public on SMS rulemaking issues in the foreseeable future. However, we continue to believe that amendments will ultimately be needed to improve Ecology's to prevent and cleanup sediment contamination problems. In particular, we believe that the rule needs clearer requirements for human health protection and freshwater sediments, better alignment with federal regulatory processes and revisions to integrate the cleanup provisions with the MTCA cleanup rule. Ecology will use the annual and triennial review processes defined in the current SMS rule to determine the scope and timing of any future amendments.

The prevention and cleanup of sediment contamination problems remains a high priority for the Department of Ecology. We ask you not to view the decision to halt the SMS rulemaking as a decision to place less emphasis on these problems. Instead, this decision represents a strategic choice on how to most effectively use our current resources to achieve improvements in environmental and human health protection. I look forward to engaging you in finding solutions to these important environmental problems.

Sincerely,



Tom Fitzsimmons  
Director

Enclosure

Attachment A  
Washington Department of Ecology  
SMS Rule Implementation and Rulemaking Closure Activities

- Project Implementation: The Toxics Cleanup Program will refocus available resources to provide increased technical and management resources for sediment cleanup projects and source control actions:
  - Sediment Cleanup: Provide increased technical assistance (including limited technical documentation and guidance memos designed to interpret and implement the current rule) to Ecology sediment cleanup site managers in order to develop project-specific requirements to address human health, freshwater sediments and potential impacts on endangered species (Ongoing).
  - Source Control: Provide increased technical assistance and guidance to NPDES permit managers including review of draft permits, fact sheets, screening level assessments, sampling plans and modeling reports (Ongoing).
  - Documentation of Project Level Decisions: Provide increased documentation on the bases for project level decisions in order to assist cleanup site managers and permit managers, promote agency accountability and maintain long-term institutional capacity (Ongoing).
- Regulatory Integration and Coordination: The Toxics Cleanup Program will work with Ecology programs and agencies to resolve regulatory process uncertainties that are currently slowing down sediment cleanup projects:
  - Clean Water Act Integration: Work with the Environmental Protection Agency and Ecology's Water Quality Program to clarify the relationship between sediment cleanup provisions and Clean Water Act requirements (Target date – April 2000).
  - Integration with MTCA Cleanup Regulation: Prepare a technical guidance memorandum that defines how the cleanup requirements in the SMS rule are implemented within the MTCA cleanup framework (Target date – May 2000).
  - Guidance on compliance with Endangered Species Act requirements. Work with EPA and the Services to prepare technical guidance materials that compile available information on listed species, sediment-related impacts on those species and procedures for using that information when establishing project-specific requirements. (Target Date – September 2000)

- Policies for Preparing 303(d) List: Work with Ecology's Water Quality Program and the Environmental Protection Agency to develop procedures and policies for preparing the next 303(d) list.
- Interagency Coordination: Ecology will work with other sediment management agencies to reinvigorate interagency coordination and decision-making processes in order to improve efforts to prevent and cleanup sediment contamination problems.
- Coordinating Monitoring Efforts: Ecology will work with other agencies to better align cleanup site monitoring efforts, the Puget Sound Ambient Monitoring Program (PSAMP) and other ongoing sediment monitoring programs.
- Performance Tracking and Evaluation: The Toxics Cleanup Program will work to improve systems to measure and track the performance of sediment cleanup and source control activities. This includes:
  - Sediment Cleanup Status Report: Prepare a compilation and evaluation of available information on current sediment cleanup sites and projects (Target date – January 2000).
  - Source Control Status Report: Prepare a compilation and review of completed and ongoing source control actions (Target date - December 2000)
  - Sediment Cleanup and Source Control Tracking: Prepare annual updates to the sediment cleanup and source control status reports. (Ongoing)
- Rule Closure Activities: The Toxics Cleanup Program will complete key technical tasks and document rule issues:
  - Draft Responsiveness Summary: Prepare a draft responsiveness summary identifying key issues and concerns raised by advisory committee members and documenting Ecology's current position on those issues (Target date – January 2000).
  - Marine Apparent Effects Threshold (AET) Values: Work with other sediment management agencies and the Port of Seattle to complete new/updated AET values. Finalize Regulatory Work Group recommendations (Target date – March 2000).
  - Regulatory Work Group Recommendations: Finalize recommendations on freshwater sediments (Target date – July 2000)
  - Benthic Assessment Methods: Obtain expert peer review and finalize contractor reports and recommendations regarding benthic assessment methods.

### Summary of Target Dates

Ecology Responses to SMS Rule Comments	January 2000
Sediment Cleanup Status Report	January 2000
New/Updated Marine AET Values	March 2000
Clean Water Act Integration Issue Clarification	April 2000
Annual Review of SMS Rule/Status Report	May 2000
MTCA/SMS Alignment – Guidance Materials	June 2000
RWG Recommendations – Freshwater Sediments	July 2000
ESA Compliance Materials (Draft)	September 2000
Source Control Status Report	December 2000